IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No.20 of 1994

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA **Sd/-**

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
C C FAMILY TRUST - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant No(s).: 1.
NOTICE SERVED for Respondent No(s).: 1.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI
Date : 24/08/2005
ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1. The Income-tax Appellate Tribunal, Ahmedabad Bench 'A' has referred the following question under Section 256(1) of the Income-tax Act, 1961 (the Act) at the instance of the Commissioner of Income-tax:

> "Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the share income which was payable to J.C. Family Trust, D.C. Family Trust and P.C. Family Trust and to Smt. Bakula V. Patel (Indl) was liable to be allocated amongst those beneficiaries and that said share income was not liable to be charged at maximum marginal rate?"

2. The Assessment Year is 1984-85 and the previous year is Samvant Year 2039. The assessee, a Trust, filed return of income on 16th July, 1984 and was assessed under Section 143(1) of the Act on 31st March, 1987. The Commissioner of Income-tax (CIT) invoked revisional powers under Section 263 of the Act and after examining the Trust Deed as well as the assessment order for Assessment Year 1983-84 came to the conclusion that the assessment framed under Section 143(1) of the Act on 31st March, 1987 was erroneous and prejudicial to the interests of the Revenue. He, therefore, set aside the assessment order with a direction to the Assessing Officer to treat the assessee-Trust as a discretionary trust and levy maximum marginal rate of tax. This order

was made on 30th March, 1989.

3. The assessee carried the matter in appeal before the Tribunal. The Tribunal has, by its order dated 30th June, 1992, partly allowed the appeal while upholding the action of the CIT in invoking powers under Section 263 of the Act. According to the Tribunal, the Trust Deed which was executed on 15th January, 1982 had 6 beneficiaries, namely, (1) J.C. Family Trust; (2) D.C. Family Trust; (3) P.C. Family Trust; (4) Jashwantlal and others; (5) Praful and others; and (6) Smt.Bakula Vasant Patel. That as per Trust Deed beneficiaries at Serial Nos.1, 2, 3 and 6 had 20% share each, while beneficiaries at Serial Nos.4 and 5 had 10% share each. It is further found by the Tribunal that the beneficiaries at Serial Nos.4 and 5, namely, Jashwantlal and others and Praful and others were Body of Individuals (BOIs) constituted under an agreement executed by the settlor of the Trust. The Tribunal came to the conclusion that the shares of the respective members of the two BOIs were indeterminate and as held by the Assessing Officer for Assessment Year 1983-84 qua this 20% which was allocated amongst two BOIs under the Deed of Trust, the income arising in hands

of the assessee-Trust was liable to be taxed at maximum marginal rate. As regards remaining 80% share income of the assessee-Trust which was payable to the three trusts and one individual, it was held that the same was liable to be allocated amongst the said beneficiaries and the income was chargeable at the normal rate. Accordingly, the Tribunal did not accept the finding of the CIT that the assessee–Trust was a discretionary trust. The Tribunal modified the order of CIT by directing the Assessing Officer to apply maximum marginal rate to 20% income of the assessee-Trust which was to be allocated to the two BOIs, while the balance 80% income of the assessee-Trust was to be taxed at the normal rate. Thus, the Tribunal has not recorded any finding as to the nature of the Trust, namely, whether it was discretionary or specific. However, the direction to take 20% of the income at maximum marginal rate having become final and there being no challenge it is not necessary to record any opinion as to whether that part of the Tribunal's order is in accordance with law or not. Suffice it to state that the Tribunal was called upon to determine the nature of the trust and whether the shares of the named

beneficiaries were determinate or not. The Tribunal was not called upon to decide as to what were the shares of the members constituting each of the beneficiaries.

4. In so far as the finding of the Tribunal in respect of 80% of income is concerned, it is apparent that the same is based on appreciation of evidence and reading of the terms of the Trust Deed. Nothing has been placed on record on behalf of the applicant-Revenue to point out that the said findings are incorrect in any manner whatsoever. The Tribunal has found that the three beneficiary trusts are specific and the shares of the said three trusts as well as the individual are determinate. The discussion as regards future contingencies in hands of each of the beneficiary trust is, to say the least, besides the point. For determination as to whether the shares are determinate or not, the inquiry has to be only in relation to the income relatable to the previous year under the Act and on the relevant valuation date under the Wealth Tax Act, 1957. Whether the shares would undergo any change in the future or not cannot govern the decision for the year under

consideration.

5. In these circumstances, in absence of any material to take any other view of the matter, it is held that the Tribunal was right in law in holding that share income which was payable to J.C. Family Trust, D.C. Family Trust, P.C. Family Trust and to Smt.Bakula V. Patel (individual) was liable to be allocated amongst those four beneficiaries and that the share income was not liable to be charged at maximum marginal rate. Accordingly, the question is answered in the affirmative i.e. in favour of the assessee and against the Revenue.

6. The reference stands disposed of accordingly.

Sd/-
[D.A. MEHTA, J]

Sd/-
[H.N. DEVANI, J]

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